

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Kastner	Team: Squad #12	CCRB Case #: 201509406	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/26/2015 2:12 PM	Location of Incident: 923 East 169th Street	Precinct: 42	18 Mo. SOL 2/26/2017	EO SOL 2/26/2017	
Date/Time CV Reported Wed, 08/26/2015 2:24 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 11/03/2015 10:10 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Danny Aguilar	2496	941319	042 PCT
2. POM Augusto Hernandez	25037	935012	042 PCT
3. Officers			042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Elvis Rodriguez	21369	942453	042 PCT
2. POF Annais Mirandaortiz	04550	940476	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against § 87(2)(b) [REDACTED]	
B. POM Augusto Hernandez	Abuse: PO Augusto Hernandez threatened § 87(2)(b) [REDACTED] with the use of force.	
C. SGT Danny Aguilar	Abuse: Sgt. Danny Aguilar threatened § 87(2)(b) [REDACTED] with the use of force.	
D. Officers	Force: Officers used physical force against § 87(2)(b) [REDACTED]	

### Case Summary

On August 26, 2015, Sgt. Danny Aguilar from the 42<sup>nd</sup> Precinct called the IAB command center to report that § 87(2)(b) sustained a fractured right arm while being taken into custody. This case was not received at the CCRB until November 3, 2015.

At approximately 11:45 a.m. on August 26, 2015, after arguing with each other near May African Hair Braiding Salon, located at 923 East 169th Street in the Bronx, § 87(2)(b) § 87(2)(b)'s son's father, called 911 and provided her whereabouts. At the time, § 87(2)(b) had an active must appear family court warrant. PO Annais Miranda-Ortiz and PO Augusto Hernandez, both from the 42<sup>nd</sup> Precinct, arrived first and were soon followed by Sgt. Aguilar and PO Elvis Rodriguez, both from the 42<sup>nd</sup> Precinct, and two unidentified officers.

The two unidentified officers handcuffed § 87(2)(b)'s left wrist while Sgt. Aguilar and PO Rodriguez twisted her right wrist behind her back (**Allegation A**). § 87(2)(b) pulled her left arm free and held her open palm near the right side of her torso while telling Sgt. Aguilar and PO Rodriguez that they were hurting her. PO Miranda-Ortiz and PO Hernandez each grabbed one of § 87(2)(b)'s legs and pulled them in front of her (**within Allegation A**). § 87(2)(b) pulled one leg back and planted it on the floor to stay upright.

From their utility belts, PO Hernandez allegedly removed pepper spray (**Allegation B**) and Sgt. Aguilar removed his Taser and threatened to use it against § 87(2)(b) (**Allegation C**). § 87(2)(b) grabbed Sgt. Aguilar's hand and said she was pregnant (about two months at the time). PO Hernandez allegedly said he would pepper spray § 87(2)(b) if she kept moving (**within Allegation B**). § 87(2)(b) said he could do whatever he wanted to do, but said not to use the Taser because it could kill her fetus. Sgt. Aguilar allegedly grabbed § 87(2)(b)'s right arm, twisted it behind her back, pushed up so hard that § 87(2)(b) heard a "crack," and immediately pushed § 87(2)(b) in her back onto the floor (**Allegation D**). § 87(2)(b) landed lying on her stomach and could not move her right arm. An ambulance was called and she was transported to § 87(2)(b) where she was diagnosed with a humerus bone fracture.

§ 87(2)(b) was charged with § 87(2)(a) 160.50, § 87(2)(b)

There is no video evidence in this case.

### Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- On § 87(2)(b), § 87(2)(b) filed a Notice of Claim with the City of New York (Board Review 01), claiming that officers used excessive force while placing her in handcuffs, despite her lack of resistance, causing her to sustain injuries to her right shoulder, arm, and lumbar spine, and ultimately causing injury to her fetus and pregnancy resulting in the termination of said pregnancy. § 87(2)(b) is seeking \$6,000,000 for personal injuries and punitive damages. As of December 4, 2016, no 50H hearing had been scheduled (Board Review 17).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 03).

- This is the first CCRB complaint filed against PO Hernandez, who has been a member of the service for 11 years.
- Sgt. Aguilar, a nine-year-member-of-the-service, has 10 prior CCRB complaints comprised of 16 allegations against him. In CCRB case number 201502107, the Board substantiated allegations that Sgt. Aguilar spoke discourteously and threatened a civilian with the use of force. The Board recommended formalized training, but the NYPD disposition is still pending.

### **Potential Issues**

§ 87(2)(b)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- § 87(2)(b) alleged that six officers were involved in this incident, although the investigation only identified four officers. Additionally, § 87(2)(b) said that the officer who threatened to Taser her was the one who broke her arm and pushed her to the floor. Sgt. Aguilar acknowledged threatening to Taser § 87(2)(b) but could not recall whether he was the officer making contact with her arm at the time he heard it break. He also denied pushing her to the floor. Additionally, PO Hernandez acknowledged making contact with § 87(2)(b)'s arm at the time he heard it break, but denied taking any specific action that caused the break. § 87(2)(g)
- § 87(2)(b) alleged that the male officer who initially arrived to the scene with PO Miranda-Ortiz was the officer who threatened to pepper spray her. Although PO Hernandez denied doing so, he confirmed that he was first to respond to the scene with PO Miranda-Ortiz. § 87(2)(g)

**Allegation A -Force: Officers used physical force against § 87(2)(b)**

**Allegation D -Force: Officers used physical force against § 87(2)(b)**

It is undisputed that § 87(2)(b) did not immediately comply with the officers' orders to go with them, although civilian and officer statements differ regarding what caused § 87(2)(b)'s initial failure to comply. § 87(2)(b) (Board Review 04) said PO Miranda-Ortiz and PO Hernandez allowed her to call her attorney. § 87(2)(b)'s sister, § 87(2)(b) (Board Review 05), who worked at the salon, said § 87(2)(b) requested five minutes to wait for a man who § 87(2)(b) was supposed to deliver a package to arrive. PO Hernandez (Board Review 06) said § 87(2)(b) who initially held scissors in her hand, but put them down when she began speaking with the officers, simply said she would not go with them, and that when PO Miranda-Ortiz reached for § 87(2)(b)'s arm to handcuff her, § 87(2)(b) slapped PO Miranda-Ortiz's hand away, a statement that was corroborated by § 87(2)(b) (Board Review 07), who observed the interaction from outside through the salon's store front window. PO Hernandez said that at that point, the officers requested a supervisor to the scene.

It is also undisputed that physical force was then used against § 87(2)(b) § 87(2)(g)

§ 87(2)(b) alleged that as two unidentified officers handcuffed her left arm, Sgt. Aguilar and PO Rodriguez twisted her right arm behind her back, causing pain. In response, § 87(2)(b) said she pulled her left arm away from the unidentified officers and held her open palm up to Sgt. Aguilar and PO Rodriguez to tell them that they were hurting her, although she denied making contact with those officers. § 87(2)(b) alleged that PO Miranda-Ortiz and PO Hernandez then grabbed her legs and pulled them in front of her. In response, § 87(2)(b) said she pulled one leg back and planted it on the floor to stay upright.

§ 87(2)(b) further said that from their utility belts, PO Hernandez removed pepper spray and Sgt. Aguilar removed his Taser and said he wanted to put the Taser in § 87(2)(b)'s stomach (analyzed below). § 87(2)(b) said she grabbed the hand Sgt. Aguilar held his Taser in and told him not to use it because she was pregnant. PO Hernandez allegedly said if § 87(2)(b) kept moving, he would pepper spray her. § 87(2)(b) said he could do whatever he wanted to do, but said not to use the Taser because it could kill her fetus. PO Hernandez returned the pepper spray to his utility belt, but Sgt. Aguilar said he did not care.

§ 87(2)(b) said she told the officers that she would give them her arm if they let go of her and left her alone and that Sgt. Aguilar then returned his Taser to his utility belt. § 87(2)(b) said she then released her grip on Sgt. Aguilar's wrist. § 87(2)(b) alleged that Sgt. Aguilar immediately grabbed her right arm, twisted it behind her back, pushed up so hard that § 87(2)(b) heard a "crack," and immediately pushed § 87(2)(b) in her back onto the floor. She said she landed lying on her stomach and could not move her right arm.

§ 87(2)(b) denied witnessing § 87(2)(b) resist arrest and said that PO Miranda-Ortiz pulling § 87(2)(b)'s leg out from underneath her is what caused § 87(2)(b) to fall to the ground and injure her arm.

PO Hernandez identified himself as the officer who held § 87(2)(b)'s right arm while standing behind her, in an attempt to handcuff her, and said that PO Rodriguez held her left arm. He said that § 87(2)(b) used her back to push PO Hernandez against the storefront window behind him, an assertion supported by the narrative of § 87(2)(b)'s arrest report (Board Review 08), but that this resulted in no injury to him and that the glass did not shatter as a result. The officers all instructed § 87(2)(b) to stop resisting and to put her arms behind her back. PO

Hernandez denied seeing Sgt. Aguilar make contact with § 87(2)(b)'s arms at any point, noting that Sgt. Aguilar and PO Miranda-Ortiz held § 87(2)(b)'s legs while attempting to bring her to the ground. PO Hernandez acknowledged hearing § 87(2)(b)'s arm break as she went to the floor, and said he was holding the arm at the time, but denied knowing what caused the injury.

Sgt. Aguilar § 87(2)(g) noted that one of § 87(2)(b)'s wrists was already handcuffed when she began waving her arms up and down in the air at her sides, and that she pushed PO Hernandez against the window. In response, the officers attempted to bring § 87(2)(b) to the floor by grabbing any limbs they could get a hold of and during this interaction, § 87(2)(b)'s arm was broken, although Sgt. Aguilar did not know what caused the injury or which officer was making contact with that arm at the time. Sgt. Aguilar did not recall twisting § 87(2)(b)'s arm behind her back and shoving her onto the floor and he did not recall seeing any officer do so.

§ 87(2)(b)'s medical records from § 87(2)(b) (Board Review 11), where she was transported from the incident location, indicate that she sustained a right humerus fracture with mild comminution and minimal displacement, a diagnosis that was confirmed at § 87(2)(b) on § 87(2)(b) (Board Review 12). § 87(2)(b) provided an x-ray depicting the broken arm at the time of her interview (Board Review 13).

An officer at the scene of a police incident must use minimum necessary force. NYPD Patrol Guide, Section 203-11 (Board Review 14).

§ 87(2)(g)

§ 87(2)(g)

**Allegation B –Abuse of Authority: PO Augusto Hernandez threatened § 87(2)(b) with the use of force.**

**Allegation C –Abuse of Authority: Sgt. Danny Aguilar threatened § 87(2)(b) with the use of force.**

As detailed above, § 87(2)(b) alleged that PO Hernandez threatened to pepper spray her and that Sgt. Aguilar threatened to Taser her, § 87(2)(g). Neither PO Hernandez nor Sgt. Aguilar acknowledged

witnessing the other threaten § 87(2)(b) with the use of force. However, while PO Hernandez also denied threatening to pepper spray § 87(2)(b) Sgt. Aguilar acknowledged threatening to Taser her, albeit not within the same context as described by § 87(2)(b)

Sgt. Aguilar § 87(2)(g) said that upon arriving to the scene with PO Rodriguez, he saw § 87(2)(b) waving a pair of scissors up and down at her side approximately 10 feet from him and the other officers. Sgt. Aguilar described her demeanor as irate and non-compliant, although he could not recall whether she said anything. Intending to arrest § 87(2)(b) for her open warrant, Sgt. Aguilar ordered her to drop the scissors, but she failed to comply. He said he took out his Taser and repeated the order, but § 87(2)(b) still did not comply. Sgt. Aguilar warned § 87(2)(b) that she would be tased if she failed to comply. After four or five orders, § 87(2)(b) put the scissors down and Sgt. Aguilar holstered his Taser.

While the IAB log (Board Review 10) notes that Sgt. Aguilar provided different circumstances surrounding § 87(2)(b)'s apprehension to IAB, Sgt. Aguilar denied the accuracy of that log, noting that the circumstances he described to the CCRB were the circumstances he remembered taking place. In either event, § 87(2)(b) denied ever holding scissors or a knife in her hand during this incident.

A threat of force that serves no purpose other than to intimidate an individual is an abuse of an officer's authority. PD v. Briscoe, OATH Index No. 1328/00 (Board Review 15). An officer may not use pepper spray on a woman believed to be pregnant (Board Review 18), and when possible, a Taser should not be used on an obviously pregnant woman (Board Review 19).

§ 87(2)(g)

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Squad: #12

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date